

IN THE SUPREME COURT OF ARIZONA

KAREN FANN, in her official capacity
as President of the Arizona Senate;
WARREN PETERSEN, in his official
capacity as Chairman of the Senate
Judiciary Committee; and the
ARIZONA SENATE, a house of the
Arizona Legislature,

Petitioners,

vs.

THE HONORABLE MICHAEL
KEMP, Judge of the SUPERIOR
COURT OF THE STATE OF
ARIZONA, in and for the County of
MARICOPA,

Respondent Judge,

AMERICAN OVERSIGHT,

Real Party in Interest.

Case No. CV-21-0197-PR

Arizona Court of Appeals
Division One
No. 1 CA-SA 2021-0141

Maricopa County Superior Court
Case No. CV2021-008265

(Motion for Procedural Order)

(Accelerated Consideration
Requested)

**REPLY IN SUPPORT OF PNI'S MOTION TO INTERVENE
AND CONSOLIDATE**

David J. Bodney, Bar No. 006065

Craig C. Hoffman, Bar No. 026017

BALLARD SPAHR LLP

1 East Washington Street, Suite 2300

Phoenix, Arizona 85004-2555

Telephone: 602.798.5400

Facsimile: 602.798.5595

Email: bodneyd@ballardspahr.com Email: hoffmanc@ballardspahr.com

Attorneys for Intervenors Phoenix Newspapers, Inc. and Kathy Tulumello

The three responses to PNI’s Motion to Intervene and Consolidate (the “Motion”) illustrate why the Motion should be granted. First, American Oversight takes “no position” other than to emphasize it “strongly opposes” any further delay in a process that has dragged on for many months. (American Oversight’s Response, at 1.) Second, Cyber Ninjas asserts that it “probably lacks the standing” to respond to the Motion (Cyber Ninjas’ Response, at 2), but uses the opportunity nonetheless to reargue its belief that the Chief Justice’s Administrative Order 2021-109 “illegally suspended” its right to a peremptory change of Judge Hannah in PNI’s case. (*Id.*, at 1, referencing its Petition for Review, CV-21-0185-PR.) And third, the Arizona Senate, President Karen Fann and Chairman Warren Petersen (together, the “Senate”) devote most of their argument to chastising PNI for filing the Motion but then announce their plan to file yet another special action “in the coming days” that challenges Judge Hannah’s order in the PNI case, admitting they would “not oppose” consolidation of this action with *their* “forthcoming” petition for review. (Senate Response at 4-5.)

Plainly, the interests of fairness to all parties, judicial efficiency and prompt consideration of the issues favor consolidation, especially in

view of the absence of any meaningful opposition to PNI's Motion. Accordingly, PNI respectfully requests that this Court grant its Motion to Intervene and Consolidate to allow consideration of the consolidated actions at its September 14, 2021 conference.

The attacks on PNI's position in the Responses of Cyber Ninjas and the Senate merit only these few further words. To be clear, PNI filed its special action and opposed consolidation in the Superior Court in good faith, after (a) the Senate denied any legal duty to review or disclose (or exercise any control over) any records not in its "physical" custody but rather in Cyber Ninjas' possession; (b) Cyber Ninjas declined to intervene to assert its interests in the American Oversight special action and expressed its pointed refusal to cooperate with a request for disclosure of any public records in its possession; and (c) PNI recognized the need to join Cyber Ninjas as a party in its special action not only for procedural fairness but also to safeguard and secure access to the particular public records subject to PNI's requests (i.e., relating to the performance, funding and staffing of the Audit) in Cyber Ninjas' physical custody.

In other words, PNI did not want its statutory right of prompt access to one collection of public records to be delayed by the consolidation

of its case with another party's action to obtain a different collection of public records already in progress before Judge Kemp. And now, in view of the Senate's repeated attempts to delay disclosure of public records in the case before Judge Kemp, PNI does not want the Senate's maneuvers in that case to forestall review and disclosure of the public records at issue in its special action before Judge Hannah. In sum, PNI sought consolidation in this Court only after a temporary stay was issued, at the Senate's request, which Judge Hannah necessarily incorporated in his August 24 Order, thus directly affecting PNI's interests.

Because of these changed circumstances, and in light of the Responses of the parties, consolidation of these actions before this Court conserves judicial resources and preserves procedural fairness to all parties affected.

Conclusion

For the foregoing reasons, and for all of the reasons set forth in its Motion to Intervene and Consolidate, PNI respectfully requests that this Court grant the Motion to Intervene and Consolidate; enter an order consolidating this case with PNI's special action against the Senate and Cyber Ninjas (and, if it chooses, with Cyber Ninjas' Petition for Review)

for purpose of prompt consideration at conference; and set an accelerated briefing schedule to allow the Court to consider the consolidated matter at its September 14, 2021 conference.

Respectfully submitted this 30th day of August, 2021.

By: /s/ David J. Bodney
David J. Bodney
Craig C. Hoffman
BALLARD SPAHR LLP
1 East Washington St, Suite 2300
Phoenix, Arizona 85004
602.798.5400
Email: bodneyd@ballardspahr.com
Email: hoffmanc@ballardspahr.com
*Attorneys for Intervenors Phoenix
Newspapers, Inc. and Kathy Tulumello*